

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F308941**

<b>LEWIS DOTSON, SR., EMPLOYEE</b>	<b>CLAIMANT</b>
<b>EUDORA PUBLIC SCHOOLS, EMPLOYER</b>	<b>RESPONDENT</b>
<b>RISK MANAGEMENT RESOURCES (TPA), INSURANCE CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED JULY 14, 2004**

Hearing before Administrative Law Judge Cynthia Estes Rogers on April 16, 2004, in Monticello, Drew County, Arkansas.

Claimant appeared Pro Se.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on April 16, 2004, to determine the compensability of the claim filed herein.

The parties stipulated to the existence of the employee-employer-carrier relationship on April 15, 2003. It was further stipulated that the claimant's earnings were \$400.00 per month.

Claimant contends that he developed a hernia as a result of a specific incident on April 15, 2003, while driving a bus for respondent employer. The claimant contends he is entitled to attendant medical benefits.

Respondents controvert the claim in its entirety, contending the claimant will not be able to meet his burden of proof required to prevail on a claim for hernia.

**STATEMENT OF THE CASE**

Claimant asserts that he developed a hernia while driving a school bus with a clutch for respondent employer. Claimant testified that on the alleged date of injury, April 15, 2003, he felt a "little something" in his abdominal area. He claims that the following day, he informed the garage supervisor that he must have "strained" himself, but he kept driving his bus, as the pain was not so severe that it caused him to cease working.

One to two weeks later, he maintains that he requested an automatic bus, rather than a bus with a clutch, because his left leg was bothering him. He was told they did not have an automatic bus available at that time, so he kept driving the clutch bus until approximately May 28, 2003, when the regular school year ended. He then began driving an automatic bus during the summer school session from approximately June 2, 2003, through June 30, 2003.

Claimant first saw his family physician on August 4, 2003, who found him to have an inguinal hernia and referred him to Dr. J. P. Burge for evaluation. He saw Dr. Burge on August 4, 2003, and was diagnosed by Dr. Burge with an inguinal hernia. Claimant underwent repair for his hernia on August 7, 2003. He returned to driving a school bus in September of 2003, when he was released by the doctor to full duty on September 18, 2003. Claimant continues to drive a school bus.

Both claimant and his wife testified that they did attempt to get the necessary “papers” from the school district to file a workers’ compensation claim and that they had to ask several times before finally getting them; however, they both testified that they did not begin asking for the paperwork until sometime in July or August of 2003.

### **FINDING OF FACT**

1. Claimant has failed to prove by a preponderance of the evidence that he has complied with the requirements of Ark. Code Ann. § 11-9-523(a).

### **DISCUSSION**

In order to prevail on a claim for hernia, the claimant must meet the requirements of Ark. Code Ann. § 11-9-523(a) (Repl. 1996), which provides:

(a) In all cases for hernia, it shall be shown to the satisfaction of the Workers’ Compensation Commission:

(1) That the occurrence of the hernia immediately followed as the result of sudden effort, severe strain, or the application of force directly to the abdominal wall;

(2) That there was severe pain in the hernial region;

(3) That the pain caused the employee to cease work immediately;

(4) That notice of the occurrence was given to the employer within forty-eight (48) hours thereafter; and

(5) That the physical distress following the occurrence of the hernia was such as to require the attendance of a licensed physician within seventy-two (72) hours after the occurrence.

In the instant case, although the claimant testified that he did tell the garage supervisor the following day that he must have “strained” himself, he further testified that the pain was not so severe that it caused him to cease working. He did not even attempt to file a claim for injury until sometime in July or August. In fact, claimant continued working and did not seek medical attention for the hernia until August 4, 2003, nearly four months after the alleged occurrence. There is no evidence that the claimant required medical attention within seventy-two (72) hours of the occurrence.

The above claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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CYNTHIA ESTES ROGERS  
Administrative Law Judge